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ABSTRACT

The American Association of University Professors' (AAUP) support for the right of institutions to deny academic freedom to professors of religion is traced historically. It is suggested AAUP would not likely censor an institution that chose to restrain heretical opinions, although this position conflicts with AAUP's strong support for open academic inquiry. The 1965-1967 Kilgore committee members appeared to prefer an option that was not being considered: the elimination of a religious restraint clause. Currently, professors of religion in church-related colleges and universities face the following unresolved questions: (1) should church-related colleges and universities have the right to restrain a professor's challenge to the church's doctrines? (2) If a college announced its policy of restraint of nonconforming opinions at the time a professor was hired, would the AAUP censor the college administration if it moved through proper channels to terminate a subsequent expression of nonconformity? Since 1950 AAUP has not spoken in support of the restraint clause, but has also failed to repudiate it. (SW)

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DENIAL OF ACADEMIC FREEDOM TO PROFESSORS OF RELIGION: A HISTORY OF AAUP COMPLICITY

Gary Davis

Writing in The Nation in 1915, the President of Reed College observed that professors had been fired because "they set their students to thinking in ways objectionable to the trustees."(1) In a "Declaration of Principles" issued later that year, the American Association of University Professors noted the President's concern and echoed his comment that "it is better for students to think about heresies than not to think at all."(2)

Nevertheless, the Association did not categorically condemn religious limitations on academic freedom. Instead, the Declaration of Principles specified that institutions which require sectarian doctrinal standards should clearly define the standards and identify the body or individual which can properly interpret them. The Association of University Professors reiterated its position in the "1940 Statement of Principles on Academic Freedom and Tenure." According to the 1940 Statement, "The teacher is entitled to full freedom in research and in the publication of results... Limitations of academic freedom because of religious... aims of the institution should be clearly stated at the time of the appointment."(3) Until 1965 statements of the Association reflect no further consideration of religious limitations on academic freedom.

In 1965, a self-survey of Association members was reported in AAUP's Bulletin. The editor of the survey, Glenn R. Morrow, noted the existence of some dissatisfaction with past concessions to religious authority. Morrow wrote that

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> the 1940 document clearly implies that (religious) limitations on (academic freedom) are permitted but says nothing about their nature or extent; it contents itself with saying that such limitations should be clearly stated in writing at the time of the appointment.(4)

According to Morrow, the 1915 and 1940 statements may not be adequate for

> several recent cases have come to the (Committee on Academic Freedom) which are difficult to adjudicate on the basis of such an open policy as this and since there has been a marked increase in the number of our chapters at religious institutions, Catholic as well as Protestant, it is likely there will be more such difficult cases.(5)

Morrow concluded that a new "statement of principles in this area is clearly needed..."(6)

Despite Professor Morrow's suggestion that formulation of new policy be left to state conferences, the Association's 1965 national Committee on Academic Freedom meeting approved a plan to study the issue. The study was to be conducted by Professors Ehrmann and Van Waes of the national staff, or "Washington Office" as it was known. The study was to examine the Association's files (which would contain complaints of violation of academic freedom), policies of religious colleges and universities, a special Danforth Foundation study and other relevant sources. The study was to determine whether a special committee on religious infringement on academic freedom should be formed.(7)

The Ehrmann-Van Waes inquiry was dissolved at an April 7, 1965, meeting of the Association's Committee on Academic Freedom, Committee A. By a vote of the delegates to the Association's 1965 meeting, it was replaced by a committee chaired by William J. Kilgore of Baylor University.(8) (Other members were Clark H. Bouw-

man, Philip Denenfeld, Loyd Easton, Wilbur Katz, Milton Konvitz, James Neill, John O'Reilly, E. Juliana Thomson and Tom Truss. All but Truss, Konvitz and Katz held appointments at private universities. In its 1966-67 report to the Association, Committee A promised a report by the Kilgore Committee soon.(9) The report was finally published in the Winter, 1967, volume of the Bulletin. It took the form of a discussion draft statement.

The Kilgore statement declared that any restraints on academic freedom must be made known at the time of hiring and "shown to be essential to the religious and the educational purposes of the institution..."(10) It went further, however, by generally condemning restraints. The Kilgore Committee claimed that the Association had, from the beginning, noted that each restriction of academic freedom "might diminish the institution's academic effectiveness and standing."(11) Yet clearly the Association's tolerance for restraints stemming from cultural and religious traditions had left great latitude for institutions which were intent on sacrificing academic freedom to sectarian purity.

Some members of the Kilgore Committee evidently realized that the 1940 religious restraint clause created a giant loop-hole for those intent on denying academic freedom for sectarian reasons. Nevertheless, on the basis of its charge the committee decided tnat it could not recommend repeal of the clause. Its removal from AAUP policy was not to be discussed.(12)

Nevertheless, after noting that any religiously-motivated restraints must be essential to the institution and published prior to the hiring of faculty, the Kilgore Committee made a statement

that is tantamount to a rejection of the restraint clause. According to the 1967 committee report

> the faculty member should respect the stated aim of an institution to which he [sic] accepts an appointment, but academic freedom protects his right to express, clarify, and interpret positions--including those identified as his own--which are divergent from those of the institution and the church which supports it.(13)

As if to signal disapproval of the restriction clause in another way, Professor Kilgore utilized a preface to his committee's report to note what his committee members took to be an "emerging tendency of church-related colleges and universities" which have decided to "waive, or drastically restrict, the use of the limitation clause."(14) Professor Kilgore expressed the hope that his committee's statement would

> encourage reconsideration of any employment of this special class, suggest restraint in its uses, and in preventing abuses in the application, and stimulate dialogue leading to a fuller, stronger academic freedom in church-related institutions.(15)

According to a report which appeared two and one-half years later in the 1970 Bulletin, the Kilgore Committee's findings elicited comment from Protestant and Catholic higher educational associations and colleges and universities and from some association members at secular institutions. "The overwhelming majority of the responses took issue with the 1940 Statement's limitations clause, urging that it be eliminated or at least recast so that religious aims would not be singled out."(16) Members of the 1970 Committee A claimed that church-related universities were abandoning policies which permitted the restraint of non-conforming opinions; as proof they noted only that recent complaints concerning the abridgement of academic freedom had not, to the knowledge of the Association,

resulted from revocation of the religious restraint clause. Oddly, the 1970 Committee A statement did not reflect an awareness of the chilling effect of the restraint clause. If, as the chairperson of Committee A had noted in 1965, faculty members may refrain from expressing controversial views precisely because of the restraint clause, the lack of complaints would not be surprising.(17)

The 1970 Committee A report did acknowledge one well-publicized, recent conflict over the right of faculty to take issue with the doctrine of the church that supports their university. The case, which ended happily, involved a published dissent by faculty at the Catholic University over the 1968 papal denunciation of artificial contraception. The dissent, which was reported to the Association in a 1980 article in the Bulletin, ended with the trustees exoneration of the dissenting faculty.(18) Following faculty members' public criticism of the 1968 papal encyclical Humanae Vitae, the trustees asked the university administration whether the faculty had violated their responsibility to their commitments as teachers in a Catholic university. With the cooperation of the Academic Senate and the AAUP, a board of inquiry was established. On April 13, 1969, the board reported to the trustees that the faculty "critique was scholarly responsible and that proceeding against the teachers was not appropriate."(19) In particular, the Board found the faculty opinions to be "tenable Roman Catholic teachings, supportable by solid scholarship..., fair to the teaching of the magisterium and mindful of the effect the dissent would have on the faithful."(20)

In other words, the board of inquiry found that the faculty

dissent was consistent with the Church's doctrines. In addition, the board of inquiry's summary report called for

> adoption of a detailed set of procedures...regarding possible conflict between any member of the |faculty| and |church authority|. Existence of such legitimate channels of theological discussion might have avoided |sic| the crisis which gave rise to the inquiry.(21)

In case of real conflict between a faculty member's opinion and church authority, some mechanism for the delineating of the conflict ought to be ready. Presumably under the policies of the Association, when religious authority is found to be challenged in a university which reserves the right to restrain non-conforming religious opinions, the faculty member must resign. At least, no other resolution is suggested in the summary report.

Could the resolution of the Catholic university case be taken as a "resounding endorsement of the appropriateness of academic freedom in its total sense to theological matters as well as other intellectual matters?"(22) Such was Committee A's interpretation of the Catholic University case. According to the Committee, the resolution of the Catholic university case demonstrates that "theological controversy is recognized as needing the protective climate of academic freedom, no less than other intellectual controversy."(23) But is this so? The Board of Inquiry at Catholic University found the faculty opinions consistent with ecclesiastical authority. Only if the faculty opinions had been found to be in conflict with church authority could the need for "the protective climate of academic freedom" in theological controversy have been demonstrated. As it turned out, there was no need for a protective climate because what at first appeared to be a conflict turned out

not to be one after all.

Although the Catholic University board of inquiry had recommended institutional endorsement of the 1940 statement "without reservation and without the concessionary restrictive clause which could permit limitations of academic freedom because of religious or other aims," those institutional policy changes had not yet occurred in 1970 when Committee A concluded that "most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 statement."(24) The 1970 Committee A did not call for abolition of restraint clause but instead was content to state that it did not endorse its use.(25)

This is as far as Association policy has come. The current, 1977 AAUP Redbook or (policy manual) contains the 1970 interpretative note with the text of the 1940 Statement's restraint clause. According to the Association's current policy, "most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 statement, and we do not now endorse such a departure."(26)

Would the Association censor or oppose such a departure? Given the historical support that the Association has given to the right of institutions to restrain expressions of non-conforming religious views, it seems likely that the Association would not censor an institution which chose to restrain heretical opinions. Yet such a position runs counter to the Association's strong support for open, unfettered academic inquiry. As AAUP spokesman Fritz Machlup once wrote, "we need and want teachers and scholars who would unhesitatingly come to the defense of the heretic."(27) Writing in the

middle sixties, a concerned Association national staff member admitted that in cases in which the religious opinions of faculty have been restrained, "we have had to consider whether an exceedingly rigid demand might not mean that an institution was in fact more a religious organization than an educational organization."(28)

What distinguishes an educational organization from a religious organization? According to another AAUP spokesman, in America "institutions of higher learning exist for the common good, not to further the interest of the individual teacher or the institution. The common good depends upon the free search for truth and its free exposition."(29) A religious organization, on the other hand, usually exists to promote a sacred story, a particular view of the truth rather than the process by which the truth is freely sought.

Conclusions

It seems clear that the 1965-67 Kilgore committee members chafed under the narrowness of their charge. Plainly they would have preferred to consider an option that had not been offered, viz., the elimination of the religious restraint clause. Denied an option of choice, the committee attempted to end the Association's support for religious restraint by signaling the obsolescence of the restraint clause.

In 1967, the clause seemed obsolete. The Kilgore committee had operated in a time of increasing liberalism in America. In 1965 Clark Byse, chairman of Committee A of the Association, suggested that the ecumenical movement would make easier a reconsideration of the Association's historical commitment to restraint of religious nonconformity in the church-related college.(30) Yet a reversal of

ecclesiastical, social and political trends in American and abroad make restraint of non-conforming opinion more likely now than in 1967.(31) As a result, professors of religion in church-related colleges and universities face the following perplexing, and still unresolved, questions.

1. Should church-related colleges and universities have the right to restrain a professor's challenge to the church's doctrines?

2. If a college announced its policy of restraint of non-conforming opinions at the time a professor was hired, would the Association censor the college administration if it moved through proper channels to terminate a subsequent expression of non-conformity?

Interestingly enough, the first question seems more easily answered than the second. Since 1950, Association spokespersons have shown absolutely no support for the restraint clause. On the other hand, they have failed to repudiate it. For the Association, religious institutions still have the right to restrain expressions of theological nonconformity.

Consequently, some final resolution of the second question is in order. The Association's latest, 1970, statement on the matter notes only that the Association does not endorse a departure from the principle of academic freedom.(32) It does not say that a departure would be censored by the Association. Without an answer to this deeper question the profession will lack clear guidelines for the protection of the academic freedom of those who teach a traditionally sensitive subject: religion.

DENIAL OF ACADEMIC FREEDOM: AAUP COMPLICITY

ENDNOTES

1. William T.Foster, "Vicarious Thinking" in The Nation (November 11, 1915) p. 567.

2. "1915 Declaration of Principles" in Louis Joughin, ed., Academic Freedom and Tenure (Madison: University of Wisconsin Press, 1969) p. 171.

3. "Statement of Principles on Academic Freedom and Tenure," in Louis Joughlin, ed., Academic Freedom and Tenure (Madison: University of Wisconsin Press, 1969) p. 36.

4. Glenn R. Morrow, "Report of the Self-Survey Committee of the AAUP" in Bulletin of the American Association of University Professors (May, 1965) p. 148.

5. Ibid., p. 148.

6. Ibid., p. 148.

7. "Annual Report of Committee A" in Bulletin of the American Association of University Professors (August, 1965), p. 241.

8. "Report of the Special Committee on Academic Freedom in Church-Related Colleges and Universities" in Bulletin of the American Association of University Professors (Winter, 1967), p. 369.

9. "Report of Committee A" in Bulletin of the American Association of University Professors (Spring, 1967), p. 122.

10. "Report of the Special Committee on Academic Freedom in Church-Related Colleges and Universities" in Bulletin of the American Academy of Religion (Winter, 1967) p. 370.

11. Ibid., p. 369.

12. Ibid., p. 369.

13. Ibid., p. 370-71.

14. Ibid., p. 370.

15. Ibid., p. 370.

16. "Report of Committee A" in Bulletin of the American Academy of University Professors (Summer 1970) p. 166.

17. Clark Byse, "Annual Report of Committee A" in Bulletin of the American Association of University Professors (August, 1965), p. 241.

18. Charles E. Curran, "Academic Freedom: The Catholic University and Catholic Theology" in Academe (April, 1980) pp. 126-135. See also Bulletin of the AAUP (May, 1969) pp. 264-66.

19. "Report of Catholic University Board of Inquiry Regarding Expressions of Theological Dissent by Faculty Members on Encyclical Humanae Vitae" in Bulletin of the American Association of University Professors (Summer, 1970) p. 265.

20. Ibid., p. 266.

21. Ibid., p. 266.

22. Ibid., p. 176.

23. Ibid., p. 176.

24. Report of Committee A, 1969-1970" in Bulletin of the American Association of University Professors (Summer, 1970) p. 167.

25. Ibid., p. 167.

26. American Association of University Professors Documents & Reports (1977) p. 3. The "interpretation" was approved by the National Council of the Association in April, 1970, and endorsed by the fifty-sixth annual meeting in June, 1970.

27. Fritz Machlup, "In Defense of Academic Tenure" in Joughin, ed., Academic Freedom and Tenure (Madison: University of Wisconsin Press, 1969) p. 329.

28. Anonymous in Joughin, ed., Academic Freedom and Tenure (Madison: University of Wisconsin Press, 1969) p. 140.

29. Howard Mumford Jones, "The American Concept of Academic Freedom" in The Bulletin of the American Association of University Professors (March, 1960) p. 68.

30. Clark Byse, "Annual Report of Committee A" in Bulletin of the American Association of University Professors (August, 1965), p. 241. The contrast in the spirits of the times is documented by Charles Curran in his article, "Academic Freedom: The Catholic University and Catholic Theology," Academe (April, 1980) pp. 126-135. See also pp. 128-31.

31. Charles Curran noted in 1980 (ibid.) that a December, 1976, meeting of delegates of canonically erected universities and faculties voted in favor of a nihil obstat for tenured professors and professors of highest rank. This decision in Rome effectively provides for the sort of censorship that could force

a non-conformist from his or her teaching post. See Curran, p. 135. In 1981, President Ronald Reagan expressed his support of Bob Jones University in its policy to enforce doctrinal conformity on students and teachers. In the same year, delegates to the annual American Bar Association meeting voted to uphold the right of Oral Roberts University to enforce doctrinal conformity on law students. To quote Robert Zimmerman, "the times, they are a chang-in."

32. "Report of Committee A, 1969-1970" in the Bulletin of the American Association of Univeristy Professors (Summer, 1970) p. 167.